Petroleum Products Co. [1916], 2 A. C. 397; *Dominion Coal Co.* v. *Roberts*, 6 T. L. R. 837. Where the contract continues to exist, the hire paid by the government is divisible between the owner and the charterer in proportion to the amount of damage, to their respective interests in the ship, caused by the requisitioning. *Chinese Mining and Engineering Co.* v. *Sale & Co.* [1917], 2 K. B. 599. See *Elliot Steam Tug Co.* v. *John Payne & Co.* [1920], 2 K. B. 693, 703. If there is no evidence of any interference with the owner's interest and the charterer has not paid the charter hire, as here in 1915, the charterer should recover the entire excess from the owner. *Dominion Coal Co.* v. *Roberts*, *supra*. But where the charterer has paid the charter hire, as here in 1916, he should be able to recover the full amount of government hire. See *Chinese Mining and Engineering Co.* v. *Sale & Co.*, *supra*, at 604. In the present case, the charterer, instead of trying to recover the above amounts, made necessarily inconsistent claims for the excess of both years and for charter hire paid by him. If the charter continues, he can recover the former, but not the latter for, although the owner is excused from performance by the "restraint of princes" clause, the charterer is obligated to perform. If the charter is frustrated, the charterer can recover the hire paid by him, but not the excess as he no longer has any interest in the ship.

CORPORATIONS — EMERGENCY FLEET CORPORATION — NOT IMMUNE FROM SUIT BECAUSE STOCK IS OWNED BY GOVERNMENT. — A bill was brought in the District Court by the plaintiff shipyards corporation to set aside a contract wrongfully obtained, for an accounting, and for restoration of property alleged to have been unlawfully seized by the agents of the Emergency Fleet Corporation. It was pleaded that the defendant was a government agent so identified with the United States that the action was maintainable only in the Court of Claims as provided by statute. (40 STAT. AT L. 913, 915.) The bill was dismissed. *Held*, that the decree be reversed. *Sloan Shipyards Corporation* v. *Emergency Fleet Corporation*, 42 Sup. Ct. Rep. 386.

An action was brought for breach of a contract made by the Emergency Fleet Corporation in its own name. The suit was dismissed upon demurrer to the complaint. *Held*, that the judgment be reversed. *Astoria Marine Iron Works* v. *Emergency Fleet Corporation*, 42 Sup. Ct. Rep. 386.

A claim of priority in bankruptcy was asserted against the estate of the Eastern Shore Shipbuilding Corporation by the Emergency Fleet Corporation on the ground that it was an agent of the government. *Held*, that the claim be denied. *Emergency Fleet Corporation* v. *Wood*, 42 Sup. Ct. Rep. 386.

This result was forecast. See *The Lake Monroe*, 250 U. S. 246; *United States* v. *Strang*, 254 U. S. 491. Yet confusion arose in the district courts. See 21 COL. L. REV. 485. To avoid this, the situation where the state carries on a business through an administrative body, and where a corporation, in which the state is a stockholder, is formed to carry on a business must be distinguished. It is arguable that the state should be subject to suit in the former situation. *Sargent County* v. *State*, 182 N. W. 270 (N. D.); criticized in 35 HARV. L. REV. 335. It is settled that the corporation is subject to suit in the latter situation. *Bank of United States* v. *Planters' Bank*, 9 Wheat. (U. S.) 904; *Darrington* v. *Bank of Alabama*, 13 How. (U. S.) 12. The decision in the principal cases is, in short, that the Emergency Fleet Corporation is a distinct legal entity and subject to suit the same as any corporation. The basis of the decisions holding the Corporation not liable in certain instances is that the Corporation in some of its activities acts as the government's agent. See *Comm. Finance*

Corporation v. *Landis*, 261 Fed. 440 (E. D. Pa.); *Ingram Day Lumber Co.* v. *Emergency Fleet Corporation*, 267 Fed. 283, 293 (S. D. Miss.). An agent of the government, merely because he is such, is not relieved of liability for his acts. *Osborn* v. *Bank of United States*, 9 Wheat. (U. S.) 738, 843. But the Corporation will not be liable for its acts properly performed within the scope of valid authority. Such acts are the government's alone. *Ballaine* v. *Alaska Northern Ry. Co.*, 259 Fed. 183 (9th Circ.). See *Ingram Day Lumber Co.* v. *Emergency Fleet Corporation*, *supra*. The only plausible argument urged against the decision in the principal cases, that it will mean a variety of judgments from state courts rendered without uniformity in rules of evidence and procedure, is untenable. All cases are removable to the federal courts, the Corporation being formed under the laws of the United States. *Rosenberg* v. *Emergency Fleet Corporation*, 271 Fed. 956 (D. Ore.); *Pacific Railroad Removal Cases*, 115 U. S. 1.

CRIMINAL LAW — INFORMATIONS — JUDICIAL DISCRETION IN FILING OF INFORMATIONS. — Leave of court was asked to file informations against the defendants, for hunting wild ducks after sunset, in violation of the regulations under the Migratory Bird Treaty Act. (1919 COMP. ST. ANN. SUPP. §§ 8837a–8837m.) The evidence tended to show a case for prosecution. *Held*, that leave be denied. *In Re Informations Under Migratory Bird Treaty Act*, 281 Fed. 546, 548 (D. Mont.).

For a discussion of the principles involved, see NOTES, *supra*, p. 204.

CRIMINAL LAW — STATUTORY OFFENSES — VIOLATION OF CRIMINAL ANARCHY ACT. — A statute defined criminal anarchy as "the doctrine that organized government should be overthrown by force or violence . . . or by any unlawful means," and made advocacy of criminal anarchy a felony N. Y. CONSOL. LAWS, c. 40, §§ 160, 161; 1918 PENAL LAW, §§ 160, 161, the defendant was convicted for publishing in his newspaper an article advocating the overthrow of the present government by a mass strike, and the substitution for it of "the dictatorship of the proletariat." *Held*, that the conviction be affirmed. *People* v. *Gitlow*, 234 N. Y. 132, 136 N. E. 317.

For a discussion of the principles involved, see NOTES, *supra*. p. 199.

CRIMINAL LAW — TRIAL — WAIVER OF PRIVILEGE FROM COMMENT ON SILENCE. — In a criminal trial where the defendant took the stand the prosecution was permitted over objection to question him on his failure to testify in the preliminary examination before the grand jury and at the coroner's inquest. A statute provided that the neglect of the defendant in any criminal case or proceeding to testify should not create any presumption against him and that the court should not permit any reference or comment to be made to or upon such neglect. (1915 MICH. COMP. LAWS, § 12552.) *Held*, that the conviction be affirmed. *People* v. *Prevost*, 189 N. W. 92 (Mich.).

For a discussion of the principles involved, see NOTES, *supra*, p. 207.

DAMAGES — AVOIDABLE CONSEQUENCES — BREACH OF WARRANTY. — The X Company contracted with the plaintiff to install a heating system for $810, that would meet certain specifications, in default of which the contractor agreed to remove the system and refund the purchase price. The defendant as surety executed a bond for the performance of the contract. After installment and a satisfactory preliminary test the purchase price was paid. Thereafter the system was unable to meet the requirements, of which the defendant and the contractor were duly and repeatedly notified, with a request to remove the system. Five months later when no action had been taken by the contractor or the defendant, the plaintiff had the plant remodelled for $690, and claimed that it would cost $464